

FORUM 8

Volume 81, No. 3

Eighth Judicial Circuit Bar Association, Inc.

November 2021

President's Message

By Evan M. Gardiner



For those who don't know me all that well, I like to talk about my kid...probably too much. I'm not going to lie though, she's pretty amazing. For those who do see me all the time, I can only imagine your hope that I would stop incessantly shoving my phone in your face to show you my latest batch of pictures. As much as I would like to turn the President's Message into a

monthly collage of pictures and updates on what my daughter has been up to, I think Dawn would cut the President's Message outright, so I'll be brief. (*Not true - send photos! - Ed.*) My daughter turned one at the end of September. It's been amazing to watch her grow over the last year and a month, and I'm constantly in awe of her. It's hard to think where the last year went, as it feels like it was just a few weeks ago my wife and I were bringing her home for the first time.

For all of us, it's crazy to think what the last year has been like. We're nearly at the end of 2021, and the last two years have been unlike anything we've seen for generations. I think a lot of people are writing off 2021 as another lost year and hoping for a better year in 2022, but I hope to end the year with some fun events and to see if we can squeeze just a little bit of enjoyment out of 2021.

To re-cap October, I had several people ask me one question leading up to the Cedar Key Dinner. They asked me, "Do you think Cedar Key will actually happen?" To be honest, for a while, I didn't really know how to respond. Moving forward with Cedar Key wasn't an easy decision to make. COVID cases have been trending downward since early-September, but COVID is still affecting Floridians at a rate higher than what we're seeing in the rest of the country. However, I thought that the Cedar Key Dinner was an important step in returning to a sense of normalcy. For nearly two years, we've been unable to

socialize with our friends and colleagues and honestly, I'm just eager to see everyone.

I can't say for certain whether it was a "smart" choice, or the "right" choice, but ultimately I stand by the decision that was made by myself and the Board. I'll end this part with a final thought and leave it at that: I urge all members to take the precautions they feel they need to do to feel safe. Peace of mind and safety is worth far more than any unneeded risks. If you feel that you are able to attend events in-person, then please by all means feel free to join us, no pressure at all.

For the October webcast, I sincerely want to thank Marcia Green, Avery Vinson, and Mikel Bradley with Three Rivers Legal Services, along with our panelists Jack Ross, Mary K. Wimsett, and Elyot Xia-Zhu. Pro Bono service is something that all attorneys should aspire to do, and I hope that the panel was able to inspire a few of you to take up the cause!

Now, turning our attention toward the remainder of 2021, in November we'll once again have a virtual webcast in place of an in-person luncheon. The November webcast will focus on nonbinding arbitration. Due to the backlog of civil cases, the Eighth Circuit, at the discretion of the assigned judge, is ordering nonbinding arbitration in disputed civil cases as another form of alternative dispute resolution. The nonbinding arbitration panel should be a helpful webcast that will highlight what otherwise may not be a well-known method of ADR available in our circuit. Additionally, the Fall Family Festival is set for the afternoon of November 20th. Details are to follow, but keep an eye on your email, and the EJCBA Facebook page ([shameless Facebook plug: https://www.facebook.com/EJCBA/](https://www.facebook.com/EJCBA/)).

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2021 - 2022 Board Officers

Evan M. Gardiner
President
151 SW 2nd Ave
Gainesville, FL 32601
(352) 388-7385
gardinere@pdo8.org

Philip Kabler
Past President
2700 NW 43rd St, Ste C
Gainesville, FL 32606
(352) 332-7688
pkabler@boginmunns.com

Dominique Lochridge-Gonzales
Secretary
1000 NE 16th Ave, Bldg 1, Ste B.
Gainesville, FL 32601
(352) 415-2324
dominique.lochridge-gonzales@trls.org

Robert E. Folsom
President-Elect
220 S. Main Street
Gainesville, FL 32601
(352) 374-3634
folsomr@circuit8.org

Monica McMillen
President-Elect Designate
101 NW 75th Street, Ste 1
Gainesville, FL 32607
(352) 327-8251
monica@mcmillenfamilylaw.com

Sharon T. Sperling
Treasurer
PO Box 358000
Gainesville, FL 32635
(352) 371-3117
sharon@sharonsperling.com

Members at Large

Jan Bendik
3600 SW 19th Ave, Apt 13
Gainesville, FL 32607
(352) 374-4122
prague@mindspring.com

Mikel Bradley
1000 NE 16th Avenue, Building I
Gainesville, FL 32601
(352) 415-2304
mikel.bradley@trls.org

Raymond F. Brady
2603 NW 13th Street, Box #403
Gainesville, FL 32609
(352) 554-5328
rbrady1959@gmail.com

Shawn Clark
353 S. Court Street
Bronson, FL 32611
(954) 816-2130
clarks@pdo8.com

Cherie Fine
622 NW 1st Street
Gainesville, FL 32601
(352) 372-7777
cfine@ffplaw.com

Allison Derek Folds
527 E. University Ave.
Gainesville, FL 32601
(352) 372-1282
derek@foldsandwalker.com

Blake Fugate
PO Box 98
Williston, FL 32696
(352) 528-0019
blake@normdfugatepa.com

Norm D. Fugate
PO Box 98
Williston, FL 32696
(352) 528-0019
norm@normdfugatepa.com

Dean Galigani
317 NW 1st Street
Gainesville, FL 32601
(352) 375-0812
dean@galiganilaw.com

Alexis J. Giannasoli
151 SW 2nd Ave
Gainesville, FL 32601
(352) 338-7369
giannasolia@pdo8.org

Frank E. Maloney, Jr. - Historian
445 E. Macclenny Ave., Ste 1
Macclenny, FL 32063
(904) 259-3155
frank@frankmaloney.us

James H. McCarty, Jr. (Mac)
2630 NW 41st Street Set A
Gainesville, FL 32606
(352) 538-1486
jhmcjr@gmail.com

George Nelson
81 N. 3rd Street
Macclenny, FL 32063
(904) 259-4245
nelsong@pdo8.org

Peg O'Connor
102 NW 2nd Ave
Gainesville, FL 32601
(352) 372-4263
peg@toklegal.com

Ian Pickens
703 N. Main Street
Gainesville, FL 32601
(352) 373-8000
ipickens@meldonlaw.com

Lauren N. Richardson
3620 NW 43rd Street, Unit B
Gainesville, FL 32606
(352) 204-2224
lauren@laurenrichardsonlaw.com

Dawn M. Vallejos-Nichols - Editor
2814 SW 13th Street
Gainesville, FL 32608
(352) 372-9999
dvallejos-nichols@avera.com

Contribute to Your Newsletter!

From the Editor

I'd like to encourage all of our members to contribute to the newsletter by sending in an article, a letter to the editor about a topic of interest or current event, an amusing short story, a profile of a favorite judge, attorney or case, a cartoon, or a blurb about the good works that we do in our communities and personal lives. Submissions are due on the 5th of the preceding month and can be made by email to dvallejos-nichols@avera.com.

About this Newsletter

This newsletter is published monthly, except in July and August, by:

Eighth Judicial Circuit Bar Association, Inc.
P.O. Box 140893
Gainesville, FL 32614
Phone: (352) 380-0333
Fax: (866) 436-5944

Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association.

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the Editor or Executive Director by Email. Also please email a photograph to go with any article submission. Files should be saved in any version of MS Word, WordPerfect or ASCII text.

Judy Padgett
Executive Director
P.O. Box 140893
Gainesville, FL 32614
Phone: (352) 380-0333
Fax: (866) 436-5944
execdir@8jcba.org

Dawn M. Vallejos-Nichols
Editor
2814 SW 13th Street
Gainesville, FL 32608
(352) 372-9999
(352) 375-2526
dvallejos-nichols@avera.com

Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Deborah C. Drylie



ZOOM Mediations - The Results are In!

All of us have likely had a Zoom experience, or 500, over the last 18 months. Of interest, in June of this year, the National Academy of Distinguished Neutrals conducted a national survey of its 1160 members located in 42 states. The purpose of the survey was to evaluate the impact Zoom and other web based platforms had on the members' mediation practice. The results confirm what we, as practitioners and members of NADN have personally experienced: not only has Zoom allowed mediations to proceed forward when the courthouses were effectively shuttered, but the overall response to video based mediation has been positive to the point it will be a permanent feature in how we mediate in the future.

The first question on the survey was: "What percentage of your cases have been conducted by video?" Of the respondents, two-thirds of the members did not conduct a single in-person mediation from April 2020 until late June 2021. Nationally, 91% of the cases that mediated with NADN members over this time frame were handled online and 9% handled some in person. In all likelihood, these 9% occurred well into this year, when vaccines became available and more widely obtained by mediation participants. It is believed that the still low rate of in-person mediations means Zoom will remain the predominant platform for mediation into the future. This is particularly true in states such as Florida, where mediation is mandatory and therefore must proceed safely and in a way that the participants are comfortable. Participants reported throughout the Southeast no change in their volume of mediations and in Florida, mediators were busier than ever.

What is likely to be of interest to those of you who mediate, the next question posed was: "How has your settlement rate been online, compared to in-person?" Of the respondents, 88% reported their settlement rate was the same or even better than their in-person rate. Ultimately, there are cases which are simply never going to settle, whether they are online or in person. The success rate over the last year may also have been impacted by the very reason online mediation became necessary, i.e. COVID. No one was immune to the immediate and even ripple effects of this disease. Plaintiffs as well as defendants found themselves in an unstable world, jobs may have been lost, family responsibilities may have radically changed and the fact no one could predict when or even if a case would ever get to trial, all played a part in the settlement drivers.

These factors will not be present in the future (one hopes), so the online success rate may change as we move forward. If online success rates falter, it will behoove counsel to choose the cases that may benefit from a return to the in-person format and for mediators to agree to conduct mediations either in a hybrid/partial online and partial in-person format or an all in-person format when appropriate.

Finally, questions were asked about both positive and negative feedback respondents have received from online participants. The positives are predominantly that it is cost and time effective, results in better attendance and better engagement. On the attendance and engagement piece, adjusters would typically not appear in person pre-COVID but would appear by phone. If an adjuster was in fact present, it may not be the adjuster who had 'lived with' the claim from its infancy. Zoom allows for the active and full participation by the individuals who are most knowledgeable and affected by the dispute.

Of interest, a small percentage (2.5%) of respondents indicated their clients favored online mediation on the basis it resulted in faster resolutions. This is far outweighed by the nearly 68% of respondents who reported the predominant negative feedback from counsel concerned a lack of personal interaction. While the absence of lunches and snacks is perhaps a tongue-in-cheek part of this response, the reality is that sharing a meal, even a mere sandwich, can bring people together. Moreover, personal interaction allows not just rapport building, but also allows mediators to engage in small talk with counsel as well as their clients. When this happens organically, because we are all sitting around a common table, it allows barriers to be broken and creates a greater sense of ease and comfort with the process. While this may be seen by some as a waste of time, it can be crucial for the mediator to build the trust necessary for the participants to become fully engaged in the negotiation and compromise mindset. For the practitioners and mediators, personal interaction also served to strengthen professional relationships which benefits both the profession as a whole as well as the clients whose cases are being discussed and analyzed.

In late spring and early summer, we all had a brief reprieve from the specter of COVID and our courts responded with a measured return to semi-normal. This resulted in a few of you dipping your toe back into the world of in-person mediation. While this may have felt scary, it was refreshing to embrace the camaraderie, professional companionship and connectedness of being able to mediate in person.

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Criminal Law

By Brian Kramer



One of my goals as State Attorney has been to build on the innovation and success that this office has had as a statewide leader in progressive prosecution. Starting in January of 2018, this office, under the direction of Bill Cervone, started a deflection program in Alachua County. In that program, every non-arrest, non-domestic misdemeanor is evaluated for deflection from the criminal justice system. One lawyer in my office reviews every case for qualifications. Each case is reviewed for factual and legal sufficiency, and to insure the victim's agreement, if applicable. Over 6,600 cases have been evaluated for the program. If the person qualifies, and the case is appropriate, the case is not sent to the Clerk's office and is held here until the defendant either accepts and completes the program or declines to participate. The program was expanded to all of the Eighth Judicial Circuit in 2019.

When a prospective participant and the case qualifies for deflection, my office contacts the participant and requests that he or she come to the office to consider entering the program. Every other Friday afternoon, in Alachua County, community stakeholders meet with these individuals to assist in this process. These stakeholders include: The Public Defender's Office, Court Services, Student Legal Services, and the City of Gainesville. The participant then either accepts or rejects the program. We find that 81% of those offered accept the program. Upon successful completion of the program, the case is closed in our system without prosecution. Circuit-wide this program enjoys a successful completion rate of greater than 90%.

This year, since taking office, we have added to our program. We have now partnered with the City of Gainesville in adding a layer of case management and supervision to the cases that originate within the city. The city program, GPA, provides a coordinator to deflection cases. It is our hope that this additional layer of support will show an increase in the success of the Gainesville participants.

I have also restructured the felony division of my office to facilitate changes designed to allow new diversion programs and to increase the efficiency of the entire court system. First, my hope is to allow felony defendants to experience deflection where appropriate. I have implemented in our felony division a new procedure that is like the misdemeanor deflection program. Every new felony case is assessed by one of my most senior

prosecutors for a variety of possible dispositions: Deflection, Pre-Trial Intervention, our new Early Resolution Court, or traditional prosecution. Cases involving domestic violence, crimes against children, and any violent crime involving a firearm are not reviewed, and are not eligible for these programs. I expect that this new program will reduce the total number of cases reaching the level of traditional prosecution by 30% and will allow the entire court system to focus on cases that are serious, or that warrant a very thorough examination of the facts.

Starting this summer, Public Defender Stacy Scott and I collaborated with Chief Judge Moseley and our Felony Criminal Division Judges to start the Early Case Resolution Program in Alachua County with the hope of expanding it circuit-wide. In this program, cases are immediately evaluated for early resolution by one of our most experienced prosecutors. When a qualifying case is identified, we make our lowest plea offer first to resolve the case within 30 days. In cases involving victims, we do not proceed with deflection or early resolution without complete victim agreement. The charging document and plea offer is passed along to the Public Defender's Office within 10 days. In the next 10 days, the Public Defender meets with the client to discuss the merits of accepting an early resolution. If the client agrees, the case is resolved by day 30.

This program will benefit not only the defendant, the victim, our office, and the Public Defender's Office, but also all other stakeholders in the criminal justice system, including law enforcement, the county detention facilities, and the courts. Early resolution of cases conserves office resources by shortening the duration of the case and limiting the amount of attorney and staff time expended on the case.

For the defendant, early resolution of a case has multiple benefits. The primary benefit is that the defendant will receive the most beneficial plea negotiation possible very early in the criminal justice process. Most defendants will ultimately resolve their case by a plea. If a defendant is incarcerated pre-trial, and the resolution is a non-incarcerative sentence, the defendant will spend less time in jail. This will allow the defendant to return to his community, work, and family more quickly. If the defendant's sentence is a jail or prison sentence, it will be the shortest possible sentence that is appropriate under the facts and circumstance of the case. Early resolution of cases will also help reduce jail populations and associated costs for county detention facilities.

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College Athletes are Employees says NLRB General Counsel

By Laura A. Gross



On September 29, 2021, National Labor Relations Board General Counsel Jennifer Abruzzo issued a memo advising that college athletes at private universities should be considered employees under federal law. She noted that the definition of “employee” under the National Labor Relations Act is broadly defined to include “any employee,” subject to few exceptions which do

not include university employees, football players or students, and under common law, an employee includes a person who performs services for another and is subject to the other’s control or right of control, and “consideration, i.e., payment, is strongly indicative of employee status.” She pointed to the U.S. Supreme Court decisions earlier this year which said the NCAA cannot limit education-related benefits given to athletes and Justice Kavanaugh concurred that the NCAA compensation rules are hard to justify and may run afoul of federal antitrust law.

Abruzzo considered the Northwestern University scholarship football players’ effort to unionize during the Obama administration and found they “clearly satisfy the broad ... definition of employee and the common-law test” because:

- The athletes play football (perform a service) for the university and NCAA, generating tens of millions of dollars in profit and boosting applications and donations.
- The players receive significant compensation covering tuition, fees, room, board, and books plus a stipend.
- The NCAA controls the players’ terms and conditions of employment.
- The university controls the manner and means of the players’ work and daily lives to ensure compliance with NCAA rules.

Refusing to label these players as “student athletes,” she concluded: “In sum, it is my position that the scholarship football players at issue in [the Northwestern University matter] and similarly situated Players at Academic Institutions, are employees under the Act. I fully expect that this memo will notify the public, especially Players at Academic Institutions, colleges and universities, athletic conferences, and the NCAA, that I will be taking that legal position in future investigations and litigation under the Act. In addition, it notifies them that I will also consider pursuing a misclassification

violation” for labeling these players as mere student-athletes and “leading them to believe that they do not have statutory protections.”

President’s Message

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In December, instead of a webcast or luncheon, the Board is working on hosting our 2021 Holiday Party. The Holiday Party is currently scheduled for December 8th from 5:30 pm to 8:30 pm at the Woolly in downtown Gainesville. I was not able to wear my wonderful Christmas suit last year, so I cannot wait to dust it off and mingle in what has to be the most uncomfortable item of clothing I own. But hey, beauty is pain, right?

Whether it be virtual or in-person, I look forward to seeing you at our next event!

ADR

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Now, however, as this article is being written in late August, the COVID numbers are once again straining our physical and emotional resources. Fortunately, based on the NADN nationwide survey, online mediations have not just saved our ability to resolve cases, but has allowed us to resolve just as many cases as we did previously, doing so cost effectively and quickly and will remain with us well into the future.

- A huge thank you to Darren A. Lee, Director of the National Academy of Distinguished Neutrals, for not just instituting the survey discussed, but putting the survey results into a format providing helpful information to mediators as well as our mediation participants.

New Funding to Address the Eviction Crisis and Other News from Three Rivers

By Marcia Green

Pro Bono Director, Three Rivers Legal Services



Three Rivers Legal Services is excited to announce that we received new funding to help stem the fallout of the eviction crisis. The new grant from the City of Gainesville, along with continued funding from Alachua County, provides Three Rivers the increased ability to assist the large numbers of tenants facing eviction. Both the City and the County realize how crucial the housing needs of the

community are since the ending of the housing moratorium.

The City of Gainesville grant provides support for a staff attorney for those facing eviction. Funds are also available to Three Rivers' clients to help with rental assistance and leverage in a legal action. For example, a tenant may be facing eviction for non-payment of rent, falling behind due to loss of job, illness or a downturn in the economy. The funding can be used for past due rent or utilities and even rent moving forward, paid directly into the Court registry or to the landlord. The purpose is to prevent loss of housing for eligible tenants in which the input of cash will make a difference. The Three Rivers intake process will assure the proper use of the funding. Other limitations and factors are in place for the best use of the funding, but we are excited for the opportunity to keep clients housed.

Three Rivers also received funding, along with the Jacksonville law firm Lippes Mathias Wexler Friedman, LLP, to provide representation in heirs' property cases. The City of Gainesville has targeted specific historic, minority neighborhoods to ensure residents gain title to heirs' property in order to take full advantage of property rights, such as homestead exemption. The initiative is part of the Gainesville Community Reinvestment Area's ten-year plan to bring quality options for homeowners, thereby maintaining the culture and population of the communities. Eligible clients are referred to Three Rivers directly from the City of Gainesville.

Kevin Rabin, our staff housing and consumer law senior attorney, has moved into the position of Litigation Director. Kevin's passion for the law, his skill-set and his attention to detail will now be available to the attorneys and volunteers from our three offices (Gainesville, Lake City and Jacksonville). He is the lead on the eviction project through the City of Gainesville. This move was prompted by the departure of our former Litigation and Advocacy Director, Natalie Maxwell, who accepted a position as Senior Attorney at the National Housing Law

Project. We greatly miss Natalie but are grateful that her knowledge and skills are now available nationwide; we couldn't be prouder.

Three Rivers is happy to welcome new staff attorney Richard "Rich" Hatch to the team. A Gainesville native and former volunteer at Southern Legal Counsel, Rich will focus on housing issues in both the Eighth and Third Judicial Circuits. Rich, sworn into the Florida Bar in October, is a 2021 graduate of Duke University College of Law. We look forward to introducing him to the local legal community.

Criminal Law

Continued from page 4

Courts will benefit from the Early Case Resolution Program because it will reduce the number of cases pending in the criminal divisions. The courts will have greater time to focus limited resources on cases that are more serious or require more litigation. The reduction in caseload will also reduce the caseloads of the clerk, courtroom deputies, probation officers and court reporters.

I am excited for the future of prosecution in the Eighth Judicial Circuit. I am thankful for our community partners who believe that the resources of this community are best served when focused in the most needed areas. I look forward to sharing more about these programs as they grow and develop.



INVITATION TO RENEW / JOIN THE 2021-22 EJCBA

The Eighth Judicial Circuit Bar Association (EJCBA) cordially invites you to either renew your membership or join the EJCBA as a new member.

To join, please visit : www.8jcba.org to pay online or return the below application, along with payment, to the EJCBA at PO Box 140893, Gainesville, FL 32614. The EJCBA is a voluntary association open to any Florida Bar member who lives in or regularly practices in Alachua, Baker, Bradford, Gilchrist, Levy or Union counties.

Remember, only current EJCBA members can access a printable version of the complete member directory, edit their own information online, post photos and a website link, and be listed on results for searches by areas of practice. Additionally, our Forum 8 Newsletter, event invitations, and updates are all sent electronically, so please ensure we have your current email address on file and add execdir@8jcba.org to your email address book and/or safe senders list.

EJCBA Membership Dues:

Free - If, as of July 1, 2021, you are an attorney in your first year licensed to practice law following law school graduation.

\$70.00 - If, as of July 1, 2021, you are an attorney licensed to practice law for five (5) years or less following graduation from law school; or

•If, as of July 1, 2021, you are a public service attorney licensed to practice law for less than ten (10) years following graduation from law school. A “public service attorney” is defined as an attorney employed as an Assistant State Attorney, or an Assistant Public Defender, or a full-time staff attorney with a legal aid or community legal services organization; or

•you are a Retired Member of the Florida Bar pursuant to Florida Bar Rule 1-3.5 (or any successor Rule), who resides within the Eighth Judicial Circuit.

\$90.00 - All other attorneys and judiciary.

Optional – YLD Membership Dues (*in addition to your EJCBA dues above*):

\$35.00 - EJCBA Young Lawyers Division (eligible if, as of July 1, 2021, you are an attorney under age 36 or a new Florida Bar member licensed to practice law for five (5) years or less)

* EJCBA voting membership is limited to Florida Bar members in good standing who reside or regularly practice law within the Eighth Judicial Circuit of Florida.

EJCBA non-voting membership is limited to active and inactive members in good standing of the bar of any state or country who resides in the Eighth Judicial Circuit of Florida, and to UF College of Law faculty.

EJCBA Renewal/Application for Membership

Membership Year: 2021 - 2022

Check one: Renewal New Membership

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Last Name: _____

Firm Name: _____

Title: _____

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City, State, Zip: _____

Eighth Judicial Circuit Bar Association, Inc.

Telephone No: (_____) _____ - _____

Fax No: (_____) _____ - _____

Email Address: _____

Bar Number: _____

List two (2) Areas of Practice:

Number of years in practice: _____

Are you interested in working on an EJCBA

Committee? Yes No

THE RESOLUTION CENTER

Is pleased to announce the following:

OUR ANNIVERSARY!!!

We have been serving the mediation needs in our legal community for **15 YEARS** and extend our gratitude and appreciation to all of you!

VICTOR L. HULSLANDER

is now a certified Circuit Civil mediator & available to assist with both your family and civil mediation needs.

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Please take a moment and visit our newly updated website which offers our mediators' biographies, rates and calendars.

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www.resolutioncenter.org

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2022 JUDICIAL NOMINATING COMMISSION VACANCIES

The Florida Bar has the opportunity to nominate six lawyers for each Judicial Nominating Commission to Gov. Ron DeSantis for his appointment. Each appointee will serve a four-year term, commencing July 1, 2022. Applicants must be members of The Florida Bar engaged in the practice of law and a resident of the territorial jurisdiction served by the commission to which the member is applying. Commissioners are not eligible for state judicial office for vacancies filled by the JNC on which they sit for two years following completion of their term.

Applications must be submitted no later than 5:30 p.m., Monday, January 3, 2022. Resumes will not be accepted in lieu of an application. Screening committees of the Board of Governors will review all JNC applications. The Executive Committee will then make recommendations to the Board of Governors.

Persons interested in applying for any of these vacancies may [download the new application form](#). If you require assistance, please call Bar headquarters at (850) 561-5757 or [email Kristen Wilson](#). Completed applications must be submitted by the January 3rd deadline date.

November 2021 Calendar

- 3 EJCBA Board of Directors Meeting, Office of the Public Defender, 151 SW 2d Ave., Conference Room (or via ZOOM), 5:30 p.m.
- 5 Deadline for submission to December Forum 8
- 6 UF Football at South Carolina, TBA
- 10 Probate Section Meeting, 4:30 p.m. via ZOOM
- 11 Veteran's Day Holiday – County & Federal Courthouses closed
- 13 UF Football v, Samford, TBA
- 19 EJCBA Monthly Meeting, Nonbinding Arbitration Panel, via Zoom, 11:45 a.m.
- 20 EJCBA Fall Family Festival, time and location TBD
- 20 UF Football at Missouri, TBA
- 25 Thanksgiving Day – County & Federal Courthouses closed
- 26 Friday after Thanksgiving Holiday – County Courthouses closed
- 27 UF Football v. FSU, TBA
- 29 First Day of Hanukah

December 2021 Calendar

- 1 EJCBA Board of Directors Meeting, Gainesville Chamber of Commerce, 300 E. University Avenue (or via ZOOM), 5:30 p.m.
- 4 SEC Football Championship, Atlanta, GA – 4:00 p.m.
- 6 Deadline for submission to January Forum 8
- 8 Probate Section Meeting, 4:30 p.m. via ZOOM
- 8 EJCBA Holiday Event, The Woolly, 5:30-8:30 p.m.
- 23 Christmas Eve Holiday, County Courthouses closed
- 24 Christmas Day (observed), County & Federal Courthouses closed
- 31 New Year's Day (observed), County Courthouses closed

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule to let us know the particulars, so we can include it in the monthly calendar. Please let us know the name of your group, the date and day (i.e. last Wednesday of the month), time and location of the meeting. Email to Dawn Vallejos-Nichols at dvallejos-nichols@avera.com.